

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA

Tori Staton,)	
)	
Plaintiff,)	
)	Civil Action No. 8:22-cv-2545-BHH
v.)	
)	
Andrew Arcer, <i>Officer Sergeant</i> ,)	<u>ORDER</u>
)	
Defendant.)	
)	

This matter is before the Court upon Plaintiff Tori Staton's ("Plaintiff") pro se complaint filed pursuant to 42 U.S.C. § 1983. On November 18, 2022, Defendant filed a motion for summary judgment (ECF No. 27), and the matter was referred to a United States Magistrate Judge for preliminary determinations in accordance with 28 U.S.C. § 636(b)(1)(B) and Local Civil Rule 73.02(B)(2)(d), D.S.C.

On November 21, 2022, the Magistrate Judge issued an order pursuant to *Roseboro v. Garrison*, 528 F.2d 309 (4th Cir. 1975), advising Plaintiff of the dispositive motion procedures and the possible consequences of the failure to respond adequately to the motion. (ECF No. 28.) Plaintiff's response to Defendant's motion was entered on the docket on December 14, 2022, and Defendant filed a reply and affidavit in support of the motion for summary judgment on December 21 and 29, 2022, respectively. (ECF Nos. 30, 32, and 34.)

After reviewing the record and the applicable law, the Magistrate Judge issued a report and recommendation ("Report") on July 31, 2023, outlining the issues and recommending that Defendant's motion be granted in part and denied in part without prejudice and with leave to re-file. (ECF No. 36.) Specifically, the Magistrate Judge

recommends that the Court grant the motion as to all claims against Defendant in his official capacity and as to the claim for deliberate indifference to serious medical needs, but that the Court deny the motion without prejudice and with leave to re-file as to Plaintiff's excessive force claim against Defendant in his individual capacity. Attached to the Magistrate Judge's Report was a notice advising the parties of the right to file written objections to the Report within fourteen days of being served with a copy. To date, no objections have been filed.

The Magistrate Judge makes only a recommendation to the Court. The recommendation has no presumptive weight, and the responsibility to make a final determination remains with the Court. *Mathews v. Weber*, 423 U.S. 261 (1976). The Court is charged with making a *de novo* determination only of those portions of the Report to which specific objections are made, and the Court may accept, reject, or modify, in whole or in part, the recommendation of the Magistrate Judge, or recommit the matter to the Magistrate Judge with instructions. 28 U.S.C. § 636(b)(1). In the absence of specific objections, the Court reviews the matter only for clear error. *See Diamond v. Colonial Life & Accident Ins. Co.*, 416 F.3d 310, 315 (4th Cir. 2005) (stating that "in the absence of a timely filed objection, a district court need not conduct a *de novo* review, but instead must 'only satisfy itself that there is no clear error on the face of the record in order to accept the recommendation.'") (quoting Fed. R. Civ. P. 72 advisory committee's note).

Here, because no party has filed objections to the Report, the Court has reviewed the record, the applicable law, and the findings and recommendations of the Magistrate Judge for clear error. After review, the Court finds no clear error and agrees with the Magistrate Judge's thorough analysis. Accordingly, the Court hereby **adopts and**

incorporates the Magistrate Judge's Report (ECF No. 36), and Defendant's motion (ECF No. 27) **is granted in part and denied in part without prejudice and with leave to re-file**. Specifically, Defendant's motion is granted as to all claims against Defendant in his official capacity and as to Plaintiff's claim for deliberate indifference to medical needs, but Defendant's motion is denied without prejudice and with leave to refile as to the excessive force claim against Defendant in his individual capacity.

IT IS SO ORDERED.

/s/Bruce H. Hendricks
United States District Judge

August 18, 2023
Charleston, South Carolina